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COMMUNITY
DEVELOPMENT

Council Review SMP
Update L06-088

DATE

EXHIBIT 13

PROJECT NAME

FILE NO

Lara B. Fowler
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E-mail: lfowler@gth-law.com

April 20, 2008

Mayor Jim Haggerton
Tukwila City Council
6200 Southcenter Blvd.
Tukwila, WA 98188

RE: Comments on City of Tukwila Shoreline Master Program

Dear Mayor Haggerton and Council Members:

Thank you for the opportunity to comment on the City of Tukwila's draft Shoreline Master Program ("SMP"). I am writing on behalf of my client, Baker Commodities, Inc. Baker Commodities provides rendering services to create useable products out of waste that would otherwise be sent to a landfill. The Baker Commodities facility, located north of I-405 in the light industrial zone at 5795 S. 130th Place, has been at this location in what is now the City of Tukwila since the 1930s. The actual property is bounded on three sides by the river (see map in Attachment A), and would be greatly impacted by the City's proposed Shoreline Master Program ("SMP").

We have provided written comments and oral testimony about the draft SMP during the City of Tukwila's Planning Commission review process. Although we very much appreciate the changes made by the Planning Commission, Baker Commodities remains very concerned about several provisions in the draft SMP.

As previously noted in comments submitted to the City, Baker Commodities had lengthy litigation against the City of Tukwila during the 1990s about the use, development, and redevelopment of the property listed above. Baker Commodities reached a settlement agreement in 1996, which was then codified in the Tukwila Municipal Code. A copy of the 1996 Settlement Agreement has already been provided to the City, but is included as reference in Attachment B. As noted previously, this Settlement Agreement addressed two major areas: future use and development of the property, and public access. We have talked with the City staff about these issues, and appreciate the direct reference in Section 14.4 to TMC 18.66.120, the particular section of code that was adopted following this settlement. We also appreciate the major changes to Section 11 on public access in the draft SMP, as the Settlement Agreement specifically states that Baker Commodities will not be required to provide public access. Baker

Commodities remains concerned about any potential interpretation that would violate the 1996 Settlement Agreement after the draft SMP is adopted.

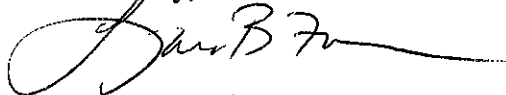
In addition, Baker Commodities remains concerned about the overall impact of increasing the buffer and the potential for triggering the vegetation requirements. First, the one-size fits all buffer width delineated in Section 7.7 of the draft SMP is problematic. In the area that includes the Baker Commodities property, the proposed "no build" buffer would be increased from 40' to 100', and would directly impact existing buildings that are within the 100' buffer (see Attachment A). Although they would be recognized as "pre-existing", Baker Commodities' ability to use these buildings in the future may be impaired. In addition, this increased buffer width greatly decreases the overall value of this property, or imposes a costly alternative of re-sloping the river bank to the City specified requirements to achieve a smaller buffer area. Because the Baker Commodities property is bounded on three sides by the river, the increased buffer width removes a huge area of potentially developable land, or the costly alternative of re-sloping the river bank, and affects the potential future use of this property.

Second, the vegetation requirements in Section 9.10 continue to be problematic. Baker Commodities is concerned that if development or re-development, no matter what size, occurs anywhere on the site within 200' of the Ordinary High Water Mark, it would have to clear the entire shoreline by hand. On this particular site, the property is bounded on three sides by the river and includes approximately 2,200 feet of riverbank. Baker Commodities has encouraged and protected the growth of a vegetative buffer, including numerous sizeable trees, within the existing 40' setback. However, removing all non-native species, including a significant amount of blackberry, mainly by hand would be very expensive, difficult to maintain, and not necessarily proportional to the activity triggering the vegetation requirements.

Again, we appreciate the changes made at the Planning Commission level, but especially given the difficult economic times, Baker Commodities remains fundamentally concerned about the negative economic impact of these proposed regulations on the viability of this property in the future. Baker Commodities recommends taking the time now to develop a more tailored approach to address the actual impact of different sites, and to ensure that rules that affect future property development are proportional to the proposed modifications to the property.

We appreciate your effort and attention to developing a draft SMP that works to both protect the environment and existing businesses within the community, and appreciate the opportunity to provide comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Lara B. Fowler", with a long horizontal flourish extending to the right.

Lara B. Fowler

cc: Mitch Ebright, Vice President, General Counsel, Baker Commodities, Inc.
Dick Hinthorne, General Manager, Baker Commodities, Inc.
Carol Lumb, Senior Planner, Department of Community Development



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30 ft

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Source: King County iMAP - Property Information (http://www.metrokc.gov/iS/iMAP)

iVAP

Legend

2005 Color Aerial Photo		Community Business	
2005 Color Aerial Photo		Community Business	
Highlighted Feature	Neighborhood Business Center	A-10 - Agricultural, one DU per 10 acres	CB - Community Business
County Boundary	Commercial Outside of Centers	A-35 - Agricultural, one DU per 35 acres	RB - Regional Business
Mountain Peaks	Urban Plan Development	F - Forest	O - Office
Highways	Urban Residential 5/12 duplex	M - Mineral	I - Industrial
Urban Growth Area Line	Urban Residential 4/12 duplex	EA-2.5 - Rural Area, one DU per 2.5 acres	Other
Incorporated Area	Urban Residential 1 duplex	EA-5 - Rural Area, one DU per 5 acres	
Streets	Rural City Urban Growth Area	EA-1K - Rural Area, one DU per 1000 acres	
Highway	Rural Town	UR - Urban Reserve, one DU per 1000 acres	
Arterial	Rural Neighborhood	R-1 - Residential, one DU per acre	
Local	Rural Residential 1 du/2.5-10 ac	R-2 - Residential, 4 DU per acre	
Lakes and Large Rivers	Industrial	R-3 - Residential, 8 DU per acre	
Streams	Forestry	R-4 - Residential, 12 DU per acre	
Parcels	Agriculture	R-5 - Residential, 18 DU per acre	
Parks	Mining	R-6 - Residential, 24 DU per acre	
Comprehensive Plan Land Use	Greenbelt Urban Separator	R-7 - Residential, 30 DU per acre	
	Kang County Owned Open Space/Recreation	R-8 - Residential, 36 DU per acre	
	Unincorporated KC Zoning	R-9 - Residential, 42 DU per acre	
		R-10 - Residential, 48 DU per acre	
		UB - Neighborhood Business Center	

[illegible]

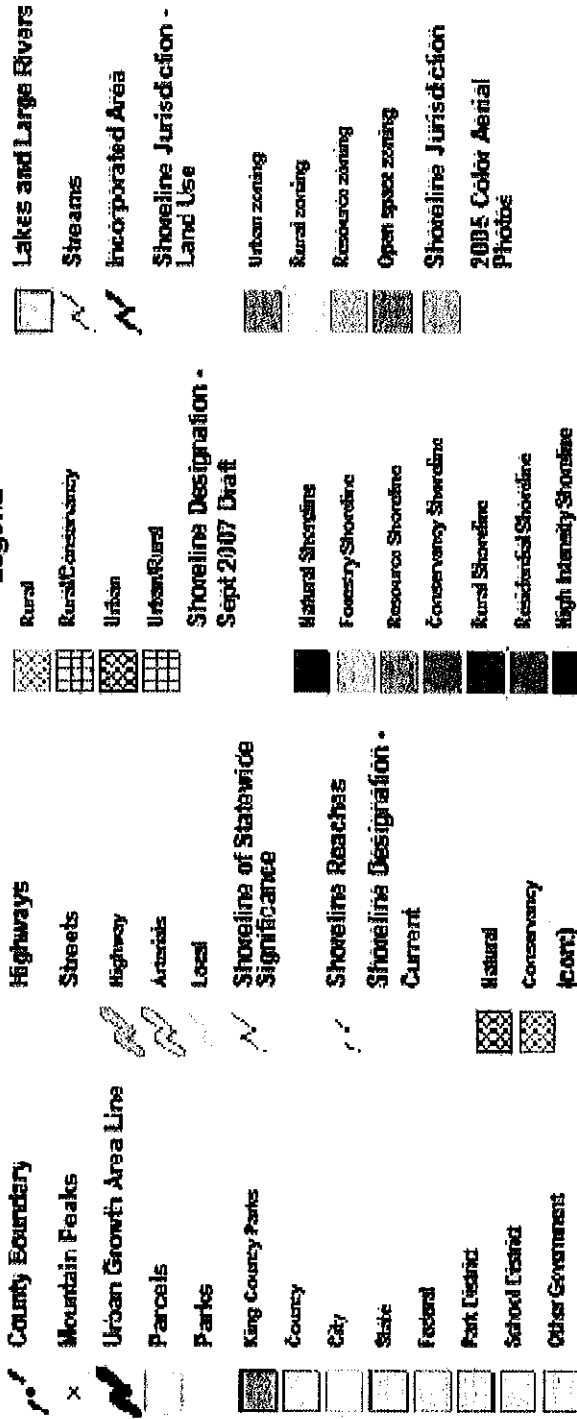


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Date: 10/9/2008 Source: King County iMAP - Shoreline Master Program (<http://www.metrokc.gov/GIS/iMAP>)

IMAP



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Date: 10/9/2008 Source: King County/IMAP - Shoreline Master Program (<http://www.kingcounty.gov/ISS/IMAP/>)



OHWM Buffer (Section 6)

Baker Commodity Property
5795 S. 130th Place

OHWM
100' Proposed Buffer
200' SMP Jurisdiction

	River
	OHWM
	OHWM Buffer (50, 100, 125 Ft)
	OHWM Buffer (200 Ft)
Parcels by Zone (125ft)	
	C/LI
	HI
	LDR
	LI
	MDR
	MIC/H
	MIC/L
	RCC
	RCM
	TUC
	TVS
	building
	buildings125ft

1 inch equals 100 feet

Settlement Agreement

City of Tukwila

&

Baker Commodities, Inc.

The City of Tukwila, a Washington municipal corporation (hereafter "Tukwila") and Baker Commodities, Inc., a Delaware corporation (hereafter "Baker") enter into the following agreement:

Whereas, Baker is the operator of a rendering works located in Tukwila; and

Whereas, in 1995, Tukwila adopted a Comprehensive Plan and Development Regulations pursuant to the Washington Growth Management Act; and

Whereas, the Development Regulations zone the property owned by Baker as Light Industrial; and

Whereas, Baker filed an appeal to the Central Puget Sound Growth Management Hearings Board challenging certain aspects of Tukwila's 1995 Comprehensive Plan and Development Regulations pursuant to the Washington Growth Management Act, which appeal is File No. 96-3-0008 of the Hearings Board; and

Whereas, the parties mutually desire to settle the issues raised in File No. 96-3-0008;

Now, therefore, it is agreed as follows:

1. Tukwila agrees that, concurrently with the execution of this Agreement, the Director of the Department of Community Development will issue a Code Interpretation regarding the use, development and re-development of rendering facilities in the Light Industrial Zone and other issues in the form attached as Exhibit 1.
2. Tukwila agrees that it will propose amendments to its Development Regulations to adopt certain standards regarding the use, development and re-development of rendering facilities in the Light Industrial Zone. Tukwila's Department of Community Development agrees that it will strongly and diligently support the adoption of such amendments by the City Council. The amendments which will be proposed are attached as Exhibit 2.

3. The amendments attached in Exhibit 2 will be proposed as part of a group of amendments which will be considered and diligently pursued by the City Council within the next two months.
4. Tukwila agrees and acknowledges that there is no legal basis on which the City could impose a condition on any permit for redevelopment or expansion of the rendering plant that would require that Baker construct, dedicate or otherwise provide a public access trail or other form of public access across the property on which Baker operates its rendering facility.
5. The use of 124th Street South, 50th Place South and 130th Place South by truck traffic to and from the Baker site is and will be permitted. It is agreed that 56th Avenue South is a residential access street and that truck traffic is not permitted to use that route into or out of the Baker site. It is acknowledged that Baker does not control all of the trucks which drive to or from its site. However, Baker agrees to direct those trucks which are under its control to not use 56th Avenue South and to advise the drivers of other trucks to avoid the use of that street.
6. Baker and Tukwila agree to direct their respective counsel to execute and file a Stipulation agreeing to the dismissal, without prejudice, of Baker's appeal to the Growth Management Hearings Board.
7. The parties recognize and acknowledge that the City cannot guarantee that the amendments set forth in Exhibit 2 will be adopted because any proposed amendment to the Development Regulations requires a public hearing process, which has not been completed. Regardless of whether the amendment to the Development Regulation is adopted, the Code Interpretation will remain in effect. In the event that the City does not adopt the amendments essentially the same as attached in Exhibit 2, the parties agree that Baker may do either or both of the following:
 - a. File a new appeal of the 1995 Comprehensive Plan and Development Regulations to the Washington Growth Management Hearings Board. In such event, Tukwila stipulates that it will not object to such appeal on the grounds that it is not filed in a timely manner and Baker stipulates that it will not raise any issues which were not raised in Case No. 96-3-0008.
 - b. File a request with Tukwila to amend the Comprehensive Plan and Development Regulations pursuant to the Washington Growth Management Act, and if the amendments proposed by Baker are not adopted, appeal Tukwila's failure to adopt such proposed amendments to the Growth Management Hearings Board. In such event, Tukwila stipulates that it will not object to such appeal on the grounds that the issues raised could have been or were raised in any previous appeal.

Agreed to this 7 day of May, 1996:

Baker Commodities, Inc.

by: R. F. Kelly

title: Executive Vice President

City of Tukwila

by: John W. Rants

title: Mayor

6503AG03.rdj

CODE INTERPRETATION FORM

CODE INTERPRETED: ZONING CODE
SECTION NO.: 18.66.020 USES REQUIRING AN
UNCLASSIFIED USE PERMIT (UUP)
DATE INTERPRETATION MADE: MAY 3, 1996

Interpretation:

(1) Normal Upkeep, Repairs and Maintenance.

Normal upkeep, repairs, maintenance, strengthening, or restoration to a safe condition of any building or structure being used as part of an unclassified use shall not require a new or revised unclassified use permit. The replacement of existing structures with either new structures of equivalent size and/or capacity, or with new structures which do not change the use and do not constitute an expansion or enlargement as described below, shall not require a new or revised unclassified use permit; provided that, in any event, any structure that is non-conforming by reason of its height, bulk, or setbacks shall not be re-constructed in a manner which increases the extent of the nonconformity. Nothing in this interpretation shall modify applicable requirements that such construction work may require a building permit or other construction permits pursuant to TMC ch. 16 (construction codes).

(2) Effect of Changes to Zoning Code or Zoning Map.

A legal use does not become nonconforming because the zone in which it is located is changed to a zone which requires an Unclassified Use Permit for the use, or because the use is changed from an allowed use to an unclassified use within the same zone; provided, however, the use may not

be expanded or buildings may not be enlarged without first obtaining an unclassified use permit for such expansion or enlargement if required pursuant to requirements listed under Intensification and Expansion, below.

(3) Intensification and Expansion of Animal Rendering Facilities.

In addition to the structures permitted pursuant to paragraph 1, above, existing animal rendering businesses shall be allowed to construct new facilities to update and/or modernize such use without needing to obtain a new or revised UUP if such construction involves an intensification of the permitted existing facility. For purposes of this interpretation, "facilities" shall refer to all structures, including tanks, processing equipment, buildings and other improvements used in the rendering operation, and "intensification" shall mean new construction shall meet all of the requirements below. Any proposed new construction which fails to meet one or more of the requirements of intensification shall be considered an enlargement or expansion, and shall require an application for a new or revised UUP for the facilities which constitute the enlargement or expansion.

A. The construction of new facilities shall be considered an intensification and may be permitted without the need to obtain an Unclassified Use Permit (UUP), if:

1. The total area of the site is not increased.
2. The construction of new facilities does not generate more than ten new vehicle trips at peak hour, as determined pursuant to established City policy and procedure related to traffic concurrency.

3. No new facilities are located in the River Environment or Low Impact portion of the Shoreline.

4. The new facilities will comply with the performance standards set forth below.

5. The construction of new manufacturing facilities does not result in more than a 5% cumulative increase in the manufacturing capacity of the processing facility.

6. The construction will not increase the extent of any nonconformity of any structure by reason of its height, bulk or setbacks.

B. Any proposed new facility which does not meet criteria A1 through A6, above, shall be considered an enlargement or expansion, and shall comply with the provisions of TMC Ch.

18.66, Unclassified Use Permits.

C. Whether or not a proposed new facility is considered an intensification or an expansion/enlargement, all other applicable codes such as construction codes, SEPA, etc., shall continue to apply.

D. Performance Standards

The following performance standards shall apply to rendering plants, in addition to the performance standards for the applicable zoning district:

1. Any new facilities constructed at a rendering plant which will be used for storage or transmission of liquid or semi-liquid products will be protected by containment facilities capable of preventing the release of any product into surface or ground waters in the

event of a spill or breakage. If more than one storage or transmission facility is protected by a containment facility, such containment facility shall be of sufficient size to contain a spill of the largest storage or transmission facility so protected.

2. Any new facilities will utilize the best feasible odor abatement equipment and shall be designed, constructed and operated so that the new facilities will not increase the risk of odor emissions from the site.

3. The facility, including both existing and new facilities, shall comply with applicable air pollution control requirements of the Puget Sound Air Pollution Control Agency, including both procedural and substantive standards.

4. A copy of the current Spill Prevention Control and Countermeasure Plan (SPCCP) as required by the Puget Sound Air Pollution Control Agency shall be on file with the DCD.

(4) Why Was This Interpretation Developed?

Legal action taken by Baker Commodities, Inc., has resulted in the need to clearly articulate objective circumstances under which modifications to Baker's rendering plant require the processing of an Unclassified Use Permit under the provisions of the Tukwila Municipal Code, and when such a permit is not required.

(5) **What is the Justification of the Interpretation?**

Court decisions like the one involving Baker Commodities, Inc., focus upon a distinction made by our courts between improvements proposed to existing facilities that involve an “intensification” of the use and those which involve an “expansion or enlargement” of the use. Expansions or enlargement of the existing use are subject to requirements related to obtaining a new or revised use permit, such as a new or revised UUP for Baker Commodities’ animal rendering plant. A proposed improvement which involves an intensification of the existing use, however, does not necessarily trigger a need under our zoning code to apply for a new or revised use permit.

Without criteria, it is difficult to determine when a proposed improvement to an existing facility constitutes an intensification or instead involves an enlargement. This interpretation provides that criteria, and provides notice and guidance to owners of existing facilities with Unclassified Use Permits, the public, city agencies and the courts as to when new improvements constitute an intensification and when they constitute an enlargement or expansion. In addition to providing guidance, this interpretation furthers the City’s goals of encouraging owners of such facilities to update, modernize and improve its facilities to minimize existing impacts upon the surrounding vicinity, without being inhibited from doing so because of the uncertainty as to whether the improvements require obtaining a new or revised UUP.

(6) Normal Upkeep and Repairs.

These provisions articulate what has been the historic practice of DCD. They also recognize court decisions that have upheld the rights of property owners to maintain legally established improvements and investments.

(7) Effect of Changes to Zoning Code or Zoning Map.

These provisions echo similar provisions of TMC 18.70.100 relating to conditional uses. There is no logical or policy basis to treat conditional and unclassified uses differently with regard to the effect of code or map changes.

Signature of Interpreter: Starck

Date: May 3, 1996

Approved By: Starck
Department of Community Development Director

Date: May 3, 1996

Exhibit 2

Proposed new sections to be added to the Zoning Code:

1. **New section TMC 18.66.110: Normal upkeep, repairs, and maintenance; replacement of existing structures.**

Normal upkeep, repairs, maintenance, strengthening, or restoration to a safe condition of any building or structure being used as part of an unclassified use shall not require a new or revised unclassified use permit. The replacement of existing structures with new structures of equivalent size and/or capacity, or with new structures which do not change the use and do not constitute an expansion or enlargement described below, shall not require a new or unclassified use permit, provided that, in the event that any structure that is non-conforming by reason of its height, bulk or setbacks, such structure shall not be re-constructed in a manner which increases the extent of the nonconformity. Nothing in this section shall modify applicable requirements that such construction work may require a building permit or other construction permits pursuant to TMC ch. 16 (construction codes)

2. **Revised TMC 18.70.100 Conditional and Unclassified Uses**

A legal use does not become nonconforming because the zone in which it is located is changed to a zone which requires a conditional or unclassified use permit for the use, or because the use is changed from an allowed use to a conditional or unclassified use within the same zone; provided,

however, the use may not be expanded nor may buildings be enlarged without first obtaining a conditional or unclassified use permit if required pursuant to requirements of TMC ch. 18.64 or TMC ch. 18.66, ~~the Conditional Use Permits chapter of this title.~~

3. New TMC 18.66.120 Expansion of Existing Unclassified Use - Animal Rendering Facilities

In addition to the structures permitted pursuant to paragraph 1, above, existing animal rendering businesses shall be allowed to construct new facilities to update and/or modernize such use without needing to obtain a new or revised UUP if such construction involves an intensification of the permitted existing facility. For purposes of this interpretation, "facilities" shall refer to all structures, including tanks, processing equipment, buildings and other improvements used in the rendering operation, and "intensification" shall mean new construction shall meet all of the requirements below.

Any proposed new construction which fails to meet one or more of the requirements of intensification shall be considered an enlargement or expansion, and shall require an application for a new or revised UUP for the facilities which constitute the enlargement or expansion.

A. The construction of new facilities shall be considered an intensification and may be permitted without the need to obtain an Unclassified Use Permit (UUP), if:

1. The total area of the site is not increased.

2. The construction of new facilities does not generate more than ten new vehicle trips at peak hour, as determined pursuant to established City policy and procedure related to traffic concurrency.

3. No new facilities are located in the River Environment or Low Impact portion of the Shoreline.

4. The new facilities will comply with the performance standards set forth below.

5. The construction of new manufacturing facilities does not result in more than a 5% cumulative increase in the manufacturing capacity of the processing facility.

6. The construction will not increase the extent of any nonconformity of any structure by reason of its height, bulk or setbacks.

B. Any proposed new facility which does not meet criteria A1 through A6, above, shall be considered an enlargement or expansion, and shall comply with the provisions of TMC Ch. 18.66, Unclassified Use Permits.

C. Whether or not a proposed new facility is considered an intensification or an expansion/enlargement, all other applicable codes such as construction codes, SEPA, etc., shall continue to apply.

4. New Section TMC 18.66.130 Performance Standards for Rendering Plants

The following performance standards shall apply to rendering plants, in addition to the performance standards for the applicable zoning district:

A. Any new facilities constructed at a rendering plant which will be used for storage or transmission of liquid or semi-liquid products will be protected by containment facilities capable of preventing the release of any product into surface or ground waters in the event of a spill or breakage.

B. Any new facilities will utilize the best feasible odor abatement equipment and shall be designed, constructed and operated so that the new facilities will not increase the risk of odor emissions from the site.

C. The facility, including both existing and new facilities, shall comply with applicable air pollution control requirements of the Puget Sound Air Pollution Control Agency, including both procedural and substantive standards.

D. A copy of the current Spill Prevention Control and Countermeasure Plan (SPCCP) as required by the Puget Sound Air Pollution Control Agency shall be on file with the DCD.